

FEB 13 1985

Mr. Edward L. Merrigan
Counsel,
National Association of Recycling
Industries, Inc.
6000 Connecticut Avenue, N.W.
Washington, D.C. 20815

Dear Mr. Merrigan:

This is in response to your request made at our meeting on January 18 and in your letter of January 24, concerning the regulatory status of scrap metal that is sent for recycling. In order to clarify any misunderstandings, we are sending you this letter which responds to your specific points; they will be discussed in the same order as they were presented in your letter.

1) Applicability of the New Definition of Solid Waste Regulations to Non-Hazardous Scrap Metal

As we stated in the meeting, the new definition of solid waste applies only to those secondary materials that are also hazardous (i.e., either exhibits one or more of the hazardous waste characteristics or is specifically listed in subpart D of Part 261). Put another way, since Subtitle C of the Resource Conservation and Recovery Act (RCRA) only deals with hazardous wastes, the terms "solid waste" and "hazardous waste" are synonymous for purposes of this rule. To make this point as clearly as possible, we adopted a clarifying provision in 40 CFR §261.1 which states that the rule "...does not apply to materials (such as non-hazardous scrap, paper, textiles, or rubber) that are not otherwise hazardous wastes and that are recycled," See 50 FR 663. This language is modelled on Section 8 of H.R. 2867 even though this language was not included in the final RCRA Amendments of 1984. Thus, we agree with NARI's interpretation that the recycling of non-hazardous scrap metal (or any other non-hazardous secondary metal for that matter) is totally unaffected by the new regulatory regime.

2) The Regulatory Inclusion and Exemption of Hazardous Scrap Metal

You stated in your letter as well as at our meeting, that the scrap metal industry believes that recycled scrap metal is neither a solid waste nor a hazardous waste that EPA can lawfully regulate under the hazardous waste provisions of RCRA. We disagree with this interpretation of the scope of RCRA. We believe and have stated in the January 4 preamble and rule that all scrap metal that would be hazardous is a solid

Faxback 11057

waste when disposed of or when recycled; scrap metal is waste-like in that it is a used material that is no longer fit for use and must be reclaimed before it can be used again, or is a process residue that must be recovered in a different operation from the one in which it was generated (see 50 FR 624, 633, 640 for more detailed discussion).

However, at this time, the Agency has decided not to regulate hazardous scrap metal that is being reclaimed. We believe that further studies need to be conducted to determine the hazardousness of scrap metal, the modes of scrap management by collection centers and by end reclaimers, the marketing arrangements in the industry, the regulatory impacts if regulation should be necessary, and whether tailored regulations can or should be developed for hazardous scrap metal. Until our investigations are completed, we are deferring regulation of hazardous scrap metal. Thus, although we believe that we have the legal authority to regulate hazardous scrap metal under Subtitle C of RCRA, we are exempting it from regulatory control while we continue to study the characteristics of scrap metal and the management practices of the scrap metal industry.

3) Superfund Legislation

You indicated in our discussions as well as in your letter that the waste disposal tax provisions of the new Superfund legislation should not apply to beneficial material recycling activities which are exempt from regulation under RCRA. I have passed on your comments to Ms. Linda Fisher, Executive Assistant to the Administrator, who coordinates EPA efforts in Superfund authorization, you may want to talk to Ms. Fisher directly at (202) 382-4700).

4) State Regulations

You indicated a concern that States that are in the process of adopting the new solid waste definition may not totally understand the new regulations and may develop unduly oppressive regulations on the scrap metal industry.

Therefore, you requested that EPA provide clarification to the States as to what its position is with respect to scrap metal.

In order to comply with your request, I have transmitted copies of this letter to each of the Regional Offices and to Ms. Susan Moreland, Executive Director, Association of State and Territorial Solid Waste Management Officials. However, as you know, the States can regulate more stringently than the Federal program. See RCRA Section 3009. Therefore, we cannot prevent the States from regulating hazardous scrap metal under their regulatory program.

Finally, as we indicated at our meeting, we would be pleased to participate in an industry-wide forum to explain and discuss the new regulations. I therefore, would be pleased to participate in the Boston program. Please keep me informed of when the meeting will take place so I can arrange my schedule.

Sincerely,

John H. Skinner
Director
Office of Solid Waste